

201821davic

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK2-----x
3 UNITED STATES OF AMERICA

4 v.

17 Cr. 364 (CS)

5 CONFERENCE

6
7 SKYLAR DAVIS, a/k/a "S-Dot";
8 ARDAE HINES, a/k/a "Young Money"
9 a/k/a "YM";
10 DAVONTE HAWKINS, a/k/a "Dirty D";
11 MICHAEL SIMMONS, a/k/a "LoSo";
12 DEMETRICE McLEAN, a/k/a "Blocks"
13 a/k/a "Demit";
14 CHRISTOPHER DAVIS, a/k/a "Whitebread";
15 DIAMANTE FRAZIER, a/k/a "Bro God";
16 DITAVIOUS WILLIAMS, a/k/a "Glock Doc";
17 DONTE NUGENT, a/k/a "Wildman";
18 DAVANTE NUGENT, a/k/a "Trap God"
19 a/k/a "Tay Tay";
20 CALVIN LEMBHARD, a/k/a "Forty";
21 PARADISE BRANCH, a/k/a "Bigga"
22 a/k/a "Petey";
23 WILLIAM FENNELL, a/k/a "Mills";
24 WILFREDO RUIZ, a/k/a "Pop";
25 TEVON ADAMS, a/k/a "Cooj";
DWIGHT McCARDLE, a/k/a "Ike";
TRISTAN HILGERS;
SETH BLAIN;
KYLE BLAIN;
ROBERT ZUCHOWSKI,

Defendants.

20-----x
21 United States Courthouse
22 White Plains, N.Y.
23 February 1, 2018
24 11:30 a.m.
25

Before: THE HONORABLE CATHY SEIBEL, District Judge

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1 APPEARANCES
23 GEOFFREY S. BERMAN
4 United States Attorney for the
5 Southern District of New York6 ALLISON NICHOLS
7 MAURENE COMEY
8 Assistant United States Attorneys9 JILL R. SHELLOW
10 Attorney for Defendant Davis11 RICHARD PALMA
12 Attorney for Defendant Hines13 ROBERT L. PEABODY
14 FLORIAN MIEDEL
15 Attorneys for Defendant Hawkins16 STEWART L. ORDEN
17 Attorney for Defendant Simmons18 LORI COHEN
19 Attorney for Defendant McLean20 KARLOFF CYLTON COMMISSIONG
21 Attorney for Defendant Christopher Davis
22 BY: MICHAEL K. BACHRACH23 LLOYD EPSTEIN
24 Attorney for Defendant Frazier
25 BY: JILL SHELLOWKENNETH A. PAUL
Attorney for Defendant Williams

(Continued)

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1 APPEARANCES
23 LORRAINE GAULI-RUFO
4 Attorney for Defendant Donte Nugent5 JAMES E. NEUMAN
6 Attorney for Defendant Davante Nugent7 DONALD JOSEPH YANNELLA, III
8 Attorney for Defendant Lembhard9 RICHARD BRUCE LIND
10 Attorney for Defendant Branch11 SCOTT B. TULMAN
12 Attorney for Defendant Fennell13 BRADLEY LAMAR HENRY
14 Attorney for Defendant Adams15 LEE ALAN GINSBERG
16 Attorney for Defendant McCardle17 MATTHEW J. KLUGER
18 Attorney for Defendant Hilgers19 DONNA RITA NEWMAN
20 Attorney for Defendant Seth Blain21 DAVID KEITH BERTAN
22 Attorney for Defendant Kyle Blain23 JAMES MICHAEL ROTH
24 Attorney for Defendant Zuchowski25 MICHAEL KEITH BACHRACH
Attorney for Defendant Young

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1 THE DEPUTY CLERK: The Honorable Cathy Seibel
2 presiding.

3 United States of America against Davis, et al.

4 THE COURT: Good morning. Everyone can have a seat.

5 Let me get the who's who.

6 Ms. Shallow and Mr. Davis. Where are you?

7 There's Ms. Shallow and Mr. Davis.

8 THE COURT: Good morning.

9 And Mr. Palma.

10 MR. PALMA: Here, your Honor.

11 THE COURT: There you are.

12 And Mr. Hines.

13 MR. PALMA: Mr. Hines is first row.

14 THE COURT: And Mr. Hawkins.

15 MR. PEABODY: Mr. Hawkins is third from the left,
16 your Honor.

17 THE COURT: All right.

18 MR. PEABODY: I'm Mr. Peabody, Robert Peabody, but
19 I'm withdrawing today with the Court's leave. Mr. Florian
20 Miedel has been --

21 MR. MIEDEL: Florian Miedel. I'm hoping you will be
22 appointing me today.

23 THE COURT: Yes. I got Mr. Peabody's application to
24 withdraw because, sadly, he is leaving our panel, and we would
25 have needed to talk about Capital Panel counsel, anyway, today

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1 for Mr. Hawkins, so thank you, Mr. Miedel, for coming up on
2 such short notice. I will grant Mr. Peabody's application to
3 be relieved.

4 And I will sign whatever I need to sign, but you need
5 to tell me what I need to sign to appoint Mr. Miedel.

6 MR. PEABODY: Thank you, Judge.

7 THE COURT: Then Mr. Simmons and Mr. Orden.

8 MR. ORDEN: Good morning, your Honor.

9 THE COURT: Good morning.

10 Mr. McLean and Ms. Cohen.

11 MS. COHEN: Good morning, your Honor.

12 THE COURT: There you are.

13 Mr. Davis. I got a letter from Mr. Commissiong at
14 like 10:45 last night that he had a conflict, and he said
15 Mr. Bachrach was coming in his place.

16 MR. BACHRACH: Good afternoon. Or good morning, your
17 Honor.

18 THE COURT: Please pass on to Mr. Commissiong that he
19 must have known about his conflict well before last night, and
20 he should have gotten me that letter sooner.

21 What would he have done if I came in this morning and
22 said no?

23 MR. BACHRACH: I will tell him that, your Honor. I
24 know he found out about the conflict yesterday afternoon when
25 speaking with me, after I had been appointed to represent

1 Mr. Young, and he thought the conference was on for tomorrow.
2 And I guess he had been on trial when your Honor changed the
3 date. And he did tell me to apologize.

4 THE COURT: Okay.

5 And Mr. Frazier.

6 And, Ms. Shellow, you're pitch hitting for
7 Mr. Epstein?

8 MS. SHELLOW: I am, your Honor.

9 THE COURT: All right.

10 Mr. Williams and Mr. Paul. I saw you there.

11 MR. PAUL: Good morning.

12 THE COURT: There you are.

13 Mr. Nugent. Where's Mr. Donte Nugent?

14 MS. RUFO: Your Honor, he's in the second row closest
15 to your Honor.

16 Lorraine Gauli Rufo.

17 THE COURT: Good morning, Ms. Rufo.

18 MS. RUFO: Good morning, your Honor.

19 THE COURT: And then Davante Nugent. Good morning.

20 And, Mr. Neuman, where are you?

21 MR. NEUMAN: Yes, your Honor.

22 THE COURT: There you are.

23 Mr. Lembhard and Mr. Yannella. Good morning.

24 MR. YANNELL: Right here.

25 THE COURT: Mr. Branch and Mr. Lind. Good morning.

1 MR. LIND: Good morning, Judge.

2 THE COURT: Mr. Fennell and Mr. Tulman.

3 MR. TULMAN: Good morning.

4 THE COURT: And then Mr. Adams is over here
5 somewhere. Mr. Adams and Mr. Henry.

6 MR. HENRY: Good morning, your Honor.

7 THE COURT: Good morning to you both.

8 Mr. McCardle and Mr. Ginsberg.

9 MR. GINSBERG: Good morning.

10 THE COURT: Good morning.

11 And good morning again.

12 Mr. Hilgers.

13 MS. NICHOLS: Mr. Hilgers pled this week, your Honor.

14 THE COURT: Oh, Mr. Hilgers I just saw. Right. He
15 just took his plea the other day.

16 Then Mr. Blain and Ms. Newman.

17 MS. NEWMAN: We are here, your Honor.

18 THE COURT: Mr. Seth Blain.

19 And Kyle Blain and Mr. Bertan. Good morning.

20 MR. BERTAN: Good morning.

21 THE COURT: Mr. Zuchowski and Mr. Roth.

22 MR. ROTH: Zuchowski.

23 THE COURT: Zuchowski.

24 MR. ROTH: Good morning, Judge.

25 THE COURT: Good morning.

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1 And, Mr. Bachrach, you've got Mr. Young.

2 MR. BACHRACH: That's correct, your Honor.

3 THE COURT: Who is just joining us, correct?

4 MR. BACHRACH: Yes, your Honor. He was indicted
5 yesterday.

6 THE COURT: All right. Very good.

7 If the baby can't keep it down, whoever is with him
8 is going to have to take him outside, or her.

9 Our first order of business, I guess, is to arraign
10 everyone on the S1 indictment, and then --

11 Oh, and Ms. Greenwood. Where are you?

12 MS. GREENWOOD: Good morning, your Honor

13 THE COURT: I didn't mean to leave you out.

14 MS. GREENWOOD: That's okay. Thank you.

15 THE COURT: Then we will talk about discovery and
16 then we will talk about counsel for the newly death-eligible
17 defendants. And then I know some individual defendants have
18 things they want to raise.

19 First I need to arraign everybody on the S1
20 indictment, except perhaps Mr. Young, who got arraigned
21 yesterday.

22 MR. BACHRACH: That's correct, your Honor.

23 THE COURT: All right.

24 Mr. Davis, have you seen a copy of the superseding
25 indictment?

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1 DEFENDANT DAVIS: Yes.

2 THE COURT: Have you reviewed it with your lawyer?

3 DEFENDANT DAVIS: Yes.

4 THE COURT: Do you understand what you're charged
5 with?

6 DEFENDANT DAVIS: Yes.

7 THE COURT: Ms. Shellow, do you believe your client
8 understands the charges?

9 MS. SHELLOW: I do, your Honor.

10 THE COURT: Would you like me to read the indictment
11 aloud or do you waive the public reading?

12 MS. SHELLOW: I'll waive the public reading.

13 THE COURT: And how does your client plead?

14 MS. SHELLOW: Not guilty, your Honor.

15 THE COURT: Thank you.

16 Mr. Hines, have you seen the superseding indictment?

17 DEFENDANT HINES: Yes.

18 THE COURT: Have you reviewed it with your lawyer?

19 DEFENDANT HINES: Yes.

20 THE COURT: Do you understand what you're charged
21 with?

22 DEFENDANT HINES: Yes.

23 THE COURT: Mr. Palma.

24 MR. PALMA: Yes, your Honor. I waive the public
25 reading. He understands it.

1 THE COURT: Entering a plea of not guilty?

2 MR. PALMA: Not guilty, yes.

3 THE COURT: All right.

4 Mr. Hawkins, have you gotten a copy of the
5 superseding indictment?

6 DEFENDANT HAWKINS: Yes.

7 THE COURT: Have you gone over it with your lawyer?

8 DEFENDANT HAWKINS: Yes.

9 THE COURT: Do you understand what you're charged
10 with?

11 DEFENDANT HAWKINS: Yes.

12 THE COURT: Mr. Miedel, have you gotten to speak to
13 Mr. Hawkins?

14 MR. MIEDEL: Yes, I have.

15 THE COURT: Do you think he understands what he's
16 charged with?

17 MR. MIEDEL: He does. And he waives a formal reading
18 of the indictment and enters a plea of not guilty.

19 THE COURT: Thank you.

20 Mr. Simmons, have you gotten a copy of the
21 superseding indictment?

22 DEFENDANT SIMMONS: Yes.

23 THE COURT: Have you gone over it with your lawyer?

24 DEFENDANT SIMMONS: Yes.

25 THE COURT: Do you understand what you're charged

1 with?

2 DEFENDANT SIMMONS: Yes.

3 THE COURT: And Mr. Orden.

4 MR. ORDEN: Your Honor, I waive its public reading.
5 I've reviewed it with my client. I believe he understands.
6 And I ask that a plea of not guilty be entered on his behalf.

7 THE COURT: Thank you, Mr. Orden.

8 Mr. McLean, have you gotten a copy of the superseding
9 indictment?

10 DEFENDANT McLEAN: Yes.

11 THE COURT: Have you gone over it with your lawyer?

12 DEFENDANT McLEAN: Yes.

13 THE COURT: Do you understand what you're charged
14 with?

15 DEFENDANT McLEAN: Yes.

16 THE COURT: Ms. Cohen.

17 MS. COHEN: Yes, your Honor. We waive the public
18 reading of the indictment, and we enter a plea of not guilty.

19 THE COURT: You're confident your client understands
20 what he's charged with?

21 MS. COHEN: Yes, ma'am.

22 THE COURT: Mr. Davis, have you seen the S1
23 indictment?

24 DEFENDANT CHRISTOPHER DAVIS: Yes.

25 THE COURT: Have you gone over it with your lawyer?

1 DEFENDANT CHRISTOPHER DAVIS: Yes.

2 THE COURT: Do you understand what you're charged
3 with?

4 DEFENDANT CHRISTOPHER DAVIS: Yes.

5 THE COURT: Mr. Bachrach, do you waive the public
6 reading?

7 MR. BACHRACH: Yes, your Honor.

8 THE COURT: And do you enter a plea of not guilty?

9 MR. BACHRACH: Yes, your Honor. Thank you.

10 THE COURT: Mr. Frazier, have you gotten the S1
11 indictment?

12 DEFENDANT FRAZIER: Yes.

13 THE COURT: You understand what you're charged with?

14 DEFENDANT FRAZIER: Yes.

15 THE COURT: Have you gone over it with your lawyer?

16 DEFENDANT FRAZIER: Yes.

17 THE COURT: Ms. Shellow, you're waiving the public
18 reading?

19 MS. SHELLOW: I'm waiving the public reading. And
20 I'm confident he understands it. And I would ask that you
21 enter a not guilty plea on his behalf.

22 THE COURT: Done.

23 Mr. Williams, you've got the S1 indictment?

24 DEFENDANT WILLIAMS: Yes.

25 THE COURT: Gone over it with your lawyer?

1 DEFENDANT WILLIAMS: Yes.

2 THE COURT: Understand what you're charged with?

3 DEFENDANT WILLIAMS: Yes.

4 THE COURT: Mr. Paul, do you think --

5 MR. PAUL: Your Honor, Mr. Williams understands the
6 indictment. We've reviewed it together. We waive it's public
7 reading. And he enters a plea of not guilty.

8 THE COURT: Thank you.

9 Mr. Donte Nugent, you've gotten the S1 indictment?

10 DEFENDANT DONTE NUGENT: Yes.

11 THE COURT: Gone over it with your lawyer?

12 DEFENDANT DONTE NUGENT: Yes.

13 THE COURT: Do you understand what you're charged
14 with?

15 DEFENDANT DONTE NUGENT: Yes.

16 THE COURT: Ms. Gauli Rufo.

17 MS. RUFO: Yes, your Honor. I'm confident he
18 understands the nature of the charges. We would waive a formal
19 reading of the indictment. And he would enter a not guilty
20 plea to all the charges.

21 THE COURT: Thank you.

22 Mr. Davante Nugent, same question. Have you seen the
23 S1 indictment?

24 DEFENDANT DAVANTE NUGENT: Yes.

25 THE COURT: Do you understand what you're charged

1 with?

2 DEFENDANT DAVANTE NUGENT: Yes.

3 THE COURT: Gone over it with your lawyer?

4 DEFENDANT DAVANTE NUGENT: Yes.

5 THE COURT: Mr. Neuman.

6 MR. NEUMAN: Yes. I've gone over the indictment with
7 my client. He understands it. We waive its public reading.
8 He enters a plea of not guilty.

9 THE COURT: Thank you.

10 Mr. Lembhard, have you seen S1 indictment?

11 DEFENDANT LEMBHARD: Yes, ma'am.

12 THE COURT: Have you gone over it with Mr. Yannella?

13 DEFENDANT LEMBHARD: Yes.

14 THE COURT: Do you understand what you're charged
15 with?

16 DEFENDANT LEMBHARD: Yes.

17 THE COURT: Mr. Yannella.

18 MR. YANNELLA: Yes. I've reviewed the indictment
19 with Mr. Lembhard. He waives the public reading and enters a
20 plea of not guilty.

21 THE COURT: Are you confident he understands what
22 he's charged with?

23 MR. YANNELLA: Yes.

24 THE COURT: All right. Very good.

25 Mr. Branch, have you seen the S1 indictment?

1 DEFENDANT BRANCH: Yes.

2 THE COURT: Gone over it with Mr. Lind?

3 DEFENDANT BRANCH: Yes.

4 THE COURT: Do you understand what you're charged
5 with?

6 DEFENDANT BRANCH: Yes.

7 THE COURT: Mr. Lind.

8 MR. LIND: Judge, he waives the public reading, and
9 we request that a plea of not guilty be entered.

10 THE COURT: And you're confident he understands the
11 charges?

12 MR. LIND: Yes, Judge.

13 THE COURT: All right.

14 Mr. Fennell, have you seen the S1 indictment?

15 DEFENDANT FENNELL: Yes.

16 THE COURT: Have you gone over it with Mr. Tulman?

17 DEFENDANT FENNELL: Yes.

18 THE COURT: Do you understand what you're charged
19 with?

20 DEFENDANT FENNELL: Yes.

21 THE COURT: Mr. Tulman.

22 MR. TULMAN: Your Honor, I've reviewed the indictment
23 with Mr. Fennell and waive the public reading. He understands
24 the indictment, the charges against him, and he enters a plea
25 of not guilty.

1 THE COURT: Thank you.

2 Mr. Adams, yes have seen the S1 indictment?

3 DEFENDANT ADAMS: Yes.

4 THE COURT: Do you understand what you're charged
5 with?

6 DEFENDANT ADAMS: Yes.

7 THE COURT: You've gone over it with Mr. Henry?

8 DEFENDANT ADAMS: Yes.

9 THE COURT: Mr. Henry, does your client understand
10 the charges?

11 MR. HENRY: He does, your Honor. And we waive the
12 public reading and enter a plea of not guilty.

13 THE COURT: Thank you.

14 Mr. McCardle, have you gotten a copy of the S1
15 indictment?

16 DEFENDANT McCARDLE: Yes.

17 THE COURT: Have you gone over it with Mr. Ginsberg?

18 DEFENDANT McCARDLE: Yes.

19 THE COURT: You understand the charges?

20 DEFENDANT McCARDLE: Yes.

21 THE COURT: Mr. Ginsberg.

22 MR. GINSBERG: Yes, your Honor. I've reviewed the
23 charges with my client. I believe he understands the charges.
24 We waive the public reading. And he wishes to enter a plea of
25 not guilty.

1 THE COURT: Very good.

2 Mr. Blain, Seth Blain, have you seen the S1
3 indictment?

4 DEFENDANT SETH BLAIN: Yes.

5 THE COURT: Have you gone over it with Ms. Newman?

6 DEFENDANT SETH BLAIN: Yes.

7 THE COURT: Do you understand what you're charged
8 with?

9 DEFENDANT SETH BLAIN: Yes.

10 THE COURT: Ms. Newman.

11 MS. NEWMAN: I've reviewed the indictment with my
12 client. He understands the charges. We would waive a public
13 reading. And we enter a plea of not guilty on his behalf.

14 THE COURT: Thank you.

15 Mr. Kyle Blain, have you seen the S1 indictment?

16 DEFENDANT KYLE BLAIN: Yes.

17 THE COURT: Have you gone over it with Mr. Bertan?

18 DEFENDANT KYLE BLAIN: Yes.

19 THE COURT: Do you understand what you're charged
20 with?

21 DEFENDANT KYLE BLAIN: Yes.

22 THE COURT: Mr. Bertan.

23 MR. BERTAN: Your Honor, I've reviewed the indictment
24 with my client. I am confident he understands it. We waive
25 its public reading. And he enters a plea of not guilty.

1 THE COURT: Very good.

2 In Zuchowski, have you seen the S1 indictment?

3 DEFENDANT ZUCHOWSKI: Yes, your Honor.

4 THE COURT: Have you gone over it with Mr. Roth?

5 DEFENDANT ZUCHOWSKI: Yes, your Honor.

6 THE COURT: You understand what you're charged with?

7 DEFENDANT ZUCHOWSKI: Yes, your Honor.

8 MR. ROTH: I've reviewed it with my client, and I'm
9 confident he understands the nature of the indictment. He
10 waives the public reading, and he pleads not guilty.

11 THE COURT: Thank you, Mr. Roth.

12 And Mr. Young was arraigned on the S1 yesterday?

13 MR. BACHRACH: Yes, your Honor.

14 THE COURT: Okay.

15 I forgot to say hi to the government.

16 Hi, Government.

17 MS. NICHOLS: Good morning, your Honor.

18 MS. COMEY: Good morning, your Honor.

19 AGENT PETROV: Good morning, your Honor.

20 THE COURT: I was so concerned with getting all the
21 defense lawyers right, I skipped right over you.

22 MS. COMEY: Your Honor, I'll note for the record that
23 with us at counsel table is Special Agent Andre Petrov of the
24 FBI.

25 THE COURT: Good morning, Mr. Petrov and Ms. Comey

1 and Ms. Nichols.

2 Can you tell me, Ms. Nichols or Ms. Comey, what
3 additional discovery, if any, is occasioned by the S1.

4 MS. NICHOLS: Yes, your Honor. We've been working on
5 getting that discovery together, and there is sort of three
6 different buckets of discovery. There's a little bit that goes
7 to all of the defendants, that is including the defendants who
8 were just charged with the narcotics crimes, and that includes
9 lab reports from controlled buys, it includes records from
10 historical cell site information, it includes some jail calls,
11 and it includes a second wire that was part of a separate
12 investigation. I would like to put on the record the details
13 of that piece of discovery.

14 There was a separate investigation out of the Bronx
15 from our office in Manhattan, and the target of that is named
16 Crawford. And one of the defendants in this case was
17 intercepted on that wire. And it is our belief, based on what
18 we understand about these two separate investigations, that
19 perhaps Mr. Crawford was a supplier to Mr. Hines and Mr. Hines
20 was, in turn, a supplier to some of the defendants here.

21 And so what the government is proposing to do -- we
22 would make available that wire to anyone who wants it, but what
23 we're proposing to do in the first instance is to produce the
24 entirety of the Crawford wire to Mr. Hines, including all of
25 the interceptions, which does include a significant portion of

1 interceptions, actually, after these defendants here were
2 arrested. And then as to everyone else who really doesn't have
3 any sort of foreseeability as to the rest of the drugs being
4 distributed that were intercepted on the Crawford wire, we
5 would produce the application and all of the written materials,
6 all of the line sheets, and we've also pulled out the line
7 sheets that just relate to Mr. Hines and Mr. Crawford, and then
8 those defendants could make arrangements if they would like to
9 have that copied for them or to come into our office and review
10 the rest of it if they would like.

11 THE COURT: Well, let me ask a logistical question.
12 We have Ms. Greenwood. Wouldn't the simplest thing be to
13 produce everything to her and then whoever wants pieces of it
14 can get it from her?

15 MS. NICHOLS: We can certainly do that.

16 THE COURT: Usually the government likes to just deal
17 with one lawyer. I know she's not serving as a lawyer here,
18 but like likes to deal with one person.

19 MS. NICHOLS: We can certainly do that, your Honor.
20 We thought that the way that we were proposing would be a
21 little bit easier because we thought that perhaps no one
22 besides Mr. Hines would be interested in that. However, we're
23 happy to produce it to Ms. Greenwood and let them sort it out
24 with her directly.

25 THE COURT: Did I speak too soon, Ms. Greenwood?

1 MS. GREENWOOD: No. That's just fine, your Honor.
2 As long as the government's position is that it is global and
3 that any defendant can request the discovery, I'm happy to
4 coordinate it in that manner.

5 THE COURT: You were just trying not to overwhelm the
6 defendants who really have no interest in it.

7 MS. NICHOLS: The concern is that it might -- just
8 because any time that Ms. Greenwood needs to copy something, it
9 takes longer, there's more things in it. So we were just
10 trying to move more expeditiously with the rest of the
11 discovery. But we're happy to give it to her and let her sort
12 it out with them.

13 So, in addition, there is --

14 THE COURT: Are we still in the first bucket?

15 MS. NICHOLS: No. We're in the second bucket now.

16 THE COURT: Okay. Now we're in the second bucket.

17 MS. NICHOLS: So the second bucket applies, we
18 believe, to the racketeering defendants. Of course, if any of
19 the defendants were charged in the narcotics conspiracy and not
20 in any of the racketeering or violent offenses would like that,
21 they can discuss that with Ms. Greenwood. We don't have a
22 problem with them having it. We just don't think it applies to
23 them. So that includes some additional Facebook returns and it
24 includes a number of different types of materials related to
25 violence. So as to various shootings, there are police

1 reports, ballistics and firearms reports. And as to the murder
2 files, there is that as well. And then there is also some
3 surveillance footage, some autopsy photos and crime scene
4 photos and other materials of that nature.

5 So the third bucket is some additional surveillance
6 video, which is about two terabytes worth of video.

7 THE COURT: That sounds like a lot.

8 MS. NICHOLS: Yes, your Honor.

9 So that relates to the Valentine's Day shooting. And
10 my understanding is that the reason why it's so voluminous is
11 that the police pulled several hours, or perhaps even more than
12 that, around the incident in question. And so we are prepared
13 to produce all of that to Ms. Greenwood and, again, let her
14 decide -- or let each defendant decide whether they want that
15 video. So we know that not every person who's charged in the
16 racketeering was at that incident and, indeed, some of them
17 were already incarcerated at the time that that shooting took
18 place. So we're contemplating that each defendant could work
19 out with Ms. Greenwood whether they are interested in -- I
20 think maybe it is more than hours, and it might be days, and
21 that's why it's voluminous.

22 THE COURT: I assume it's because it's a whole slew
23 of different cameras.

24 MS. NICHOLS: There are a number of different
25 cameras, yes, your Honor.

1 THE COURT: Okay.

2 MS. NICHOLS: And I think it is highly likely that a
3 lot of that video footage is not going to be particularly
4 helpful, but because the government has it and because the
5 government can't anticipate what might or might not be helpful
6 to defense counsel, we're prepared to produce all of that.

7 THE COURT: Okay.

8 MS. NICHOLS: And the police reports will help them
9 narrow the time, of course, that the shooting took place, but
10 we were not prepared to cut off a particular time and say that
11 before or after this particular time they don't need to see, so
12 we're producing everything that we have.

13 THE COURT: You're producing everything that the
14 police pulled.

15 MS. NICHOLS: Yes.

16 THE COURT: And I take it that, when you produce the
17 video file, it will be clear what the location of the camera
18 is.

19 MS. NICHOLS: The cameras are labeled in the way that
20 they were labeled. I think one is called camera three and one
21 is called camera four.

22 THE COURT: So how are the lawyers supposed to know
23 where the cameras located?

24 MS. NICHOLS: I believe there's a report that will be
25 produced with the racketeering conspiracy bucket of discovery

1 that indicates where the cameras were pulled from. They're
2 lead reports from the police that indicate which cameras
3 correspond to what businesses and locations in the vicinity.

4 THE COURT: All right. But this is not going to be
5 like a pole camera, where there's months of stuff to review?
6 This is all in basically the day before and the day after.
7 It's just a lot of different angles.

8 MS. NICHOLS: Correct, your Honor.

9 THE COURT: All right. Okay. Well, this may have
10 some effect on our schedule. That may be an understatement.

11 MS. NICHOLS: So there's one more category, your
12 Honor, which is individual discovery. So, for many of the
13 defendants, that is not really anything. There's marshal
14 intake forms for everyone.

15 THE COURT: Don't they already have all that?

16 MS. NICHOLS: Well, the marshal intake forms probably
17 should have gone out last time, but didn't, so they will go out
18 this time.

19 For a number of defendants, there are phone
20 extraction reports. And so what the government is
21 contemplating doing is producing those phone extraction reports
22 to each defendant whose phone it is in individual discovery.
23 As we continue to -- or as we begin and then continue to review
24 those extraction reports, we will be pulling out any Rule 16
25 and distributing it to the group, but, in the first instance,

1 due to the sensitive nature of a personal phone, we're
2 producing those as individual discovery.

3 THE COURT: Any other individual discovery? Just the
4 marshal paperwork and the phone extractions?

5 MS. NICHOLS: For most people, that's what it is,
6 your Honor.

7 THE COURT: And do you have phone discovery for
8 everybody or just a handful?

9 MS. NICHOLS: It's somewhere in between, your Honor.
10 Not everyone had a phone when they were arrested. Some people
11 had multiple phones. There were 34 phones seized incident to
12 arrest as part of the case, but they did not come from each
13 defendant. They came from some and not all.

14 THE COURT: They came from --

15 MS. NICHOLS: Some of the defendants, but not all of
16 them.

17 THE COURT: So some had more than one phone.

18 MS. NICHOLS: Correct, your Honor.

19 THE COURT: Okay. So that's a lot of phone
20 extractions.

21 All right. Well -- I'm just looking at what I said
22 last time. I probably said definitely setting a schedule for
23 motions and such. But this may put things in a different
24 light.

25 Let me ask Ms. Shellow, because you seem to have been

1 communicating with co-counsel, what the -- well, let me state
2 the obvious, too.

3 There are three defendants with death-eligible
4 charges, correct?

5 MS. NICHOLS: There's four, your Honor.

6 MS. SHELLOW: Four.

7 THE COURT: Four. I'm sorry. So that's Mr. Davis,
8 Mr. Hawkins. And who are the other two?

9 MS. NICHOLS: Fennell.

10 MS. SHELLOW: Fennell and Mr. Young.

11 MR. TULMAN: My client, your Honor, Mr. Fennell.

12 THE COURT: Mr. Fennell and --

13 MR. BACHRACH: And Mr. Young, your Honor.

14 THE COURT: And Mr. Young. All right.

15 We will talk in a moment about their representation
16 and all that, but they, obviously, have now a new and different
17 front on which they're going to be fighting.

18 Hold on one second.

19 (Pause)

20 THE COURT: Ms. Shellow, have you had the opportunity
21 to survey your brothers and sisters and see what they have in
22 mind?

23 MS. SHELLOW: I have surveyed some of them, your
24 Honor. And I would suggest, for all of the group that are not
25 capital defendants, although they may want a different

1 spokesperson, at least 90 days given the representations by the
2 government of the volume of additional discovery. And that
3 would be 90 days they would come back and then identify motions
4 and set a schedule.

5 THE COURT: Do all the noncapital defendants think
6 that's reasonable? Let's put it this way. Any noncapital
7 defendant object to that?

8 MR. LIND: Well, my client would like to move sooner
9 than that, Judge. I don't know if that's in his best interest,
10 but I just want to raise that with the Court. I represent
11 Paradise Branch.

12 THE COURT: And is he in the racketeering or is he
13 just in the drug conspiracy?

14 MR. LIND: He's in the racketeering.

15 THE COURT: So there's going to be a lot of new
16 discovery coming his way.

17 MR. LIND: I understand that. I'm just voicing what
18 his position is, Judge.

19 THE COURT: All right. I understand.

20 MR. YANNELLA: Your Honor, Donald Yannella for Calvin
21 Lembhard.

22 My client is sitting next to the individual who just
23 made that application, and he wants me to join it. He's also
24 in the racketeering count, Count One of the indictment. So I'm
25 going to have some new discovery to deal with. But he's asking

1 me to voice the objection, also, or join the application.

2 MS. NEWMAN: Your Honor, Donna Newman on behalf of
3 Seth Blain.

4 On the other hand, your Honor, we would respectfully
5 request the 90 days to review all the discovery.

6 THE COURT: Well, I think 90 days is reasonable.

7 MR. NEUMAN: Judge, I'm sorry to interrupt. My
8 client I think wants me to make a record, also.

9 James Neuman for Davante Nugent, Judge.

10 I believe he wants a faster schedule as well. He's
11 also in the racketeering count.

12 THE COURT: Well --

13 MS. RUFO: Your Honor, Lorraine Gauli Rufo on behalf
14 of Donte Nugent, who has also expressed that he would like to
15 have a quicker schedule as well.

16 THE COURT: Well, I understand completely why the
17 defendants are getting antsy. However, there's a new
18 indictment. There's new charges. There's new discovery. The
19 lawyers only have so many hours in the day. And the majority
20 of the -- the vast majority of the defendants are okay with it.
21 And there's been no severance. And I'm not going to sever just
22 for that reason. And, further, I haven't heard any of the
23 lawyers for the clients who object to 90 days telling me that
24 they don't think they need the 90 days. So I think that 90
25 days is reasonable given the volume and given the changes that

1 have come down with the S1. So I will ask Ms. Cama to look for
2 a date in about three months time.

3 In the meantime, we need to talk about the
4 representation of the four defendants who are now death
5 eligible.

6 MR. GINSBERG: Your Honor, before we move onto that.
7 Lee Ginsberg. It seems to me that there's a separate, but
8 related issue as to discovery that we need to sort out sooner
9 rather than later.

10 Based on what the government said, it seems like a
11 lot of discovery that they're now turning over may not relate
12 to quite a number of the defendants in this case. For example,
13 my client's in the narcotics conspiracy and, based on what they
14 said, I might not need to review it. However, we don't know
15 now whether there's going to be a trial; if there is a trial,
16 whether any of that discovery -- the material that makes up
17 that discovery is going to be something that could conceivably
18 be used at trial as part of a larger conspiracy or somebody
19 else's conduct that's admissible against that person.

20 And I know those are in limine motions; however, if
21 we don't know now what the groupings are going to be and
22 whether that's going to be important or not, I don't -- for
23 example, I don't review the discovery because I don't think,
24 based on what was said, I need to. We have a motion schedule.
25 I don't see a need to make motions. My client decides to go to

1 trial and now, all of a sudden, six months from now, a year
2 from now, some of that material -- the government will argue
3 that some of that material is admissible in the conspiracy or
4 in the racketeering. We wouldn't have -- I wouldn't have
5 reviewed it because of what's being said today. On the other
6 hand, it may end up becoming relevant.

7 And I think one of the ways to deal with that -- I
8 think your Honor mentioned something about severance. One of
9 the ways to deal with that is really to begin as soon as
10 possible to see if there's a way to break up the indictment and
11 the groups in the indictment because of this what seems to be
12 vast amount of discovery that may relate to only some portion
13 of the defendants.

14 THE COURT: Well, obviously, at some point, we're
15 going to have to whack it up if more than ten defendants want a
16 trial. And we may have to whack it up sooner because the
17 death-eligible defendants are going to have to go through a
18 process and will have a -- so I wouldn't be surprised if they
19 got severed at some point. Whether the non-racketeering
20 defendants get severed from the racketeering defendants, I
21 mean, it's entirely possible, depending on how many want to go
22 to trial, but I think it's a little premature. I guess I'm not
23 prepared to say now don't worry about it, you're not going to
24 trial with a racketeering defendant. You might well.

25 MR. GINSBERG: I understand. That's why I raised it,

1 because it's conceivable that I'm going to -- I and maybe
2 others will be in a position where we didn't feel it necessary
3 to review all this new discovery and then it does become
4 necessary because of the way the groupings were or who goes to
5 trial with whom and what the government argues is admissible.

6 THE COURT: Well, I think you need to assume the
7 worst.

8 MR. GINSBERG: Well, then the point -- that's why I
9 wanted to raise that, because then, regardless of what the
10 government is now saying about how the new discovery affects
11 particular defendants in particular groups, we still need,
12 apparently, to review all of it.

13 THE COURT: Well, no. You may or may not. You need
14 to make the judgment you always make as a lawyer --

15 MR. GINSBERG: Yes.

16 THE COURT: -- whether or not you need it. But if
17 there's an act of violence that your client was in jail for and
18 there's no indication he was aware of it or participated, then
19 you don't, or if there are buys that don't involve your guy or
20 anybody he knew, you know, you don't need to.

21 But, yeah, I mean, it's entirely possible that, when
22 it comes down to it, depending on how many people want a trial,
23 it may be that somebody who's involved in an act of violence is
24 going to trial with somebody who is only involved with drugs or
25 it's entirely possible I will sever down the line either for

1 management reasons or for other reasons. But I don't want
2 anybody to think, when they're thinking about their motions,
3 that they're necessarily going to be going to trial only with
4 other defendants who are charged like them. That may or may
5 not happen.

6 Also, with the death-eligible defendants, if we get a
7 quick no seek, then maybe they will be going to trial with
8 other people, too. I don't know if there is such a thing as a
9 quick no seek nowadays, but I think -- I'm encouraging the
10 government to do what it can to pair down the census here in
11 the next 90 days because I do think, either at the next
12 conference or very soon thereafter, I'm going to have to start
13 whacking up people for trial. And, look, the obvious split is
14 the non-racketeering defendants, the racketeering defendants
15 and the murder defendants. But it may be that we don't need to
16 break it into three. Make we can break it into two. But with
17 this many lawyers and the need to set trial dates so far in
18 advance, if it's not going to be at the next conference, it's
19 going to be very soon thereafter. And that's apart from
20 whatever severance motions the defendants may want to make. As
21 we know, those are often long shots, but often they get what
22 they want, anyway, just because of logistics.

23 So if you're going to be making deals, make them now.

24 MR. ORDEN: Your Honor, if I may.

25 THE COURT: Yes, Mr. Orden.

1 MR. ORDEN: Thank you. Stewart Orden on behalf of
2 Michael Simmons.

3 And I don't know whether this clarifies anything,
4 but, as I listened to the government speak about bucket one and
5 I think it was bucket three, there was a suggestion, but not a
6 concession in the way they portrayed the new discovery that
7 relates to two individual defendants that, basically, it was
8 irrelevant. If we wanted to get it, we could get it, we could
9 look at it, but it was irrelevant to the other named
10 defendants. And I think --

11 THE COURT: Is this the Valentine's Day shooting? I
12 mean, you guys know a lot more about this than I do. Who is
13 charged with that shooting?

14 MS. NICHOLS: Your Honor, William Fennell and Troy
15 Young are charged with that, your Honor.

16 THE COURT: Okay. And that was in the category of --

17 MS. NICHOLS: Well, there is --

18 THE COURT: -- anyone can have it if they want it.
19 And that's an act of racketeering, I assume.

20 MS. NICHOLS: Yes, your Honor.

21 Maybe I wasn't clear. There is a lot of material
22 related to the Valentine's Day shooting that we anticipate will
23 and should go out to all of the racketeering defendants.

24 THE COURT: That's part of bucket two.

25 MS. NICHOLS: Yes, your Honor.

1 There is also two terabytes of video footage.

2 THE COURT: That's bucket three.

3 MS. NICHOLS: That's separate. And so, because it
4 takes a long time to copy two terabytes of video footage,
5 Ms. Greenwood and the government have agreed that we would put
6 that on a separate drive. And because some of the racketeering
7 defendants who may want to review all of the discovery about
8 all of the racketeering defendants were in jail when that
9 shooting took place, they may not want to review the
10 surveillance footage. They know that they're not on it.

11 THE COURT: That makes sense to me.

12 MR. LIND: Judge, Richard Lind.

13 MR. ORDEN: I'm not done.

14 MR. LIND: Oh, I'm sorry.

15 MR. ORDEN: So is there a concession from the
16 government that that which is contained in bucket one, which is
17 the wiretaps, and that which is contained in the video in
18 bucket three, where our clients are not involved, is irrelevant
19 evidence either at sentencing or at trial?

20 MS. NICHOLS: Absolutely not.

21 MR. ORDEN: Otherwise, I don't know how to make a
22 decision here.

23 THE COURT: I didn't hear anything like that at all.
24 I heard them say that bucket one is going to everybody,
25 including that other wiretap, and it relates primarily to

1 Mr. Hines, but anyone can look at it, and that the surveillance
2 video, likewise, is available to anyone else, but it primarily
3 presumably relates to the two defendants who are involved in
4 that shooting. And I didn't hear them say it was irrelevant.

5 But you, as a lawyer, will do what you do in all your
6 cases, and you will make a decision about whether it's a good
7 use of your time to look at surveillance footage of a shooting
8 your client wasn't involved in and/or what portions of that
9 wire to listen to. And this is just like any other judgment
10 call that you, as an attorney, are entitled to make.

11 MS. COMEY: Your Honor, if I could just note for the
12 record those buckets that we set out and the clarification of
13 what may be relevant to others was simply meant as a courtesy
14 to help defense counsel as they review voluminous discovery.
15 That is what it is meant to be.

16 THE COURT: I took it as the government's view of
17 what the government thinks the defense lawyers will be
18 interested in. But it's certainly not binding on -- the
19 defense lawyers don't have to agree. And I certainly didn't
20 hear the government saying that it was making any sort of
21 commitment as to relevance or use against any particular
22 defendant.

23 Right now, Mr. Davis, Mr. Fennell and Mr. Young have
24 lawyers who are not on the Capital Panel.

25 MR. BACHRACH: No, your Honor. I'm on the Capital

1 Panel.

2 THE COURT: Oh, you are?

3 MR. BACHRACH: Yes.

4 THE COURT: Well, that's convenient.

5 MR. BACHRACH: I believe that's why I got called,
6 your Honor.

7 THE COURT: Oh, so you're here on short notice, too.
8 Thank you.

9 Mr. Bachrach is on the Capital Panel and Mr. Miedel
10 is on the Capital Panel.

11 And you will both, obviously, be conferring with
12 Mr. Patent about learned counsel, and I'm sure I will hear from
13 him.

14 MR. BACHRACH: And, your Honor, both of us have
15 already e-mailed Mr. Patent and hopefully will be speaking to
16 him tomorrow.

17 THE COURT: Very good.

18 So I'm going to address myself to Mr. Davis and
19 Mr. Fennell.

20 Where are you Mr. Fennell? There you are. All
21 right. So let me explain something which your lawyer may have
22 already explained, but I need to explain it as well.

23 You're now both charged with offenses that carry a
24 potential sentence of death. The government does not
25 necessarily seek such a sentence in every case. Sometimes it

1 does. Often it doesn't. But every case is different. So it's
2 entirely possible they will seek such a sentence in this case
3 and, accordingly, you now, as I said a moment ago, have two
4 fronts on which to fight. One is the one that's been here all
5 along, which is to fight the charges, or not, depending on what
6 you think is in your best interest, but the second one, the new
7 one, is to try to persuade the government not to seek the death
8 penalty.

9 Because you are charged with an offense that carries
10 a potential sentence of death, you are entitled to two lawyers.
11 We call one your lead counsel and one your learned counsel.
12 The learned counsel is a lawyer who is experienced in
13 death-eligible cases and specializes in that sort of work. And
14 regardless of who your lead lawyer is, you will get a learned
15 counsel on your case.

16 Right now, Mr. Davis, your lead lawyer is
17 Ms. Shellow.

18 And, Mr. Fennell, yours is Mr. Tulman.

19 Because you're now charged with a death-eligible
20 case, you're entitled, if you want, to swap out your current
21 lawyer for a lawyer from the Southern District Capital Panel.

22 So our Criminal Justice Act Panel, which supplies
23 lawyers for defendants who can't afford lawyers, has one big
24 panel, scores of -- dozens of lawyers on it, and then we have a
25 smaller panel of a subset of those lawyers who also are

1 experienced in death-eligible cases. And you are entitled to a
2 lead lawyer from our Southern District CJA Panel who is on the
3 Capital Panel because experienced and skilled in death-eligible
4 cases as well as learned counsel. You also have the option, if
5 you would like, to keep your current lawyer, and you'll still
6 get learned counsel.

7 This is something you should discuss with your
8 lawyer, if you haven't already, and you should think through.
9 Some defendants in your case, if they have a relationship and a
10 good feeling with the lawyer that they have, they decide they
11 want to keep that lawyer. Even though that lawyer is not on
12 the Capital Panel and doesn't have the experience in capital
13 cases, they still want to keep that lawyer as their lead
14 counsel. Other defendants say, no, I want a lawyer who's on
15 the Capital Panel, who's experienced in these kinds of cases.

16 I'm only talking about the lead-counsel position.
17 Either way, you're going to get learned counsel.

18 Ms. Shellow, have you had the opportunity to discuss
19 this issue with Mr. Davis?

20 MS. SHELLOW: I have, your Honor.

21 THE COURT: And is he prepared to make a decision or
22 does he want more time to think?

23 MS. SHELLOW: I believe he's prepared to make a
24 decision, your Honor.

25 THE COURT: Have you had enough time to -- well,

1 first of all, have you discussed this with Ms. Shellow before
2 today?

3 DEFENDANT SKYLAR DAVIS: Yes.

4 THE COURT: And have you had enough time to think
5 this over?

6 DEFENDANT SKYLAR DAVIS: Yes.

7 THE COURT: It's a big decision.

8 Do you know what you would like to do? Do you want
9 to keep Ms. Shellow or would you like to swap her out for
10 somebody from the Capital Panel who has experience in
11 death-penalty cases?

12 DEFENDANT SKYLAR DAVIS: Yes, I'll keep her.

13 THE COURT: You want to keep Ms. Shellow?

14 DEFENDANT SKYLAR DAVIS: Yes.

15 THE COURT: And as I said, either way, you're going
16 to get another lawyer who's experienced in capital cases.

17 Do you understand that you have a right to have a
18 lawyer replace Ms. Shellow who's experienced in cases like
19 yours, where the death penalty is a possible punishment?

20 DEFENDANT SKYLAR DAVIS: Yes.

21 THE COURT: And you understand that, if you decide to
22 keep Ms. Shellow, you're not going to be able to complain later
23 on, if you're unhappy how things turn out, that your rights
24 were violated by not having a lawyer from the Capital Panel?

25 DEFENDANT SKYLAR DAVIS: Yes.

1 THE COURT: And have you understood everything I've
2 said today?

3 DEFENDANT SKYLAR DAVIS: Yes.

4 THE COURT: And it's your decision that you would
5 like to keep Ms. Shellow and have her joined by somebody who's
6 learned counsel?

7 DEFENDANT SKYLAR DAVIS: Yes.

8 THE COURT: Anybody think I should ask any further
9 questions of Mr. Davis?

10 MS. NICHOLS: Nothing from the government, your
11 Honor.

12 MS. SHELLOW: No, your Honor. I think it's
13 sufficient.

14 THE COURT: All right.

15 Mr. Fennell, have you had an opportunity to discuss
16 this issue with Mr. Tulman?

17 DEFENDANT FENNELL: Yeah, I did.

18 THE COURT: Actually, I should ask you, Mr. Tulman.
19 Have you had an opportunity to discuss this issue
20 with Mr. Fennell?

21 MR. TULMAN: I have, your Honor. I believe that my
22 client would be inclined to keep me, but, because of the
23 seriousness of this matter, I would like an opportunity to meet
24 with him again and just think about things that I may not have
25 thought of in our initial meeting on the subject.

1 THE COURT: All right.

2 Well, Mr. Fennell, sounds like Mr. Tulman wants to
3 sit with you again and talk about this, and that's a prudent
4 thing to do. Why don't we do this.

5 Well, at this point, let me ask you, Mr. Fennell,
6 have you understood what I've been discussing this morning?

7 DEFENDANT FENNELL: Yes, I do.

8 THE COURT: And do you understand that, because
9 you're now charged with a death-eligible case, you will be
10 getting a learned counsel in addition to your lead counsel?

11 DEFENDANT FENNELL: I understand.

12 THE COURT: And do you understand that your lead
13 counsel, Mr. Tulman, is not on the Capital Panel; in other
14 words, not on the roster of CJA lawyers who specializes in
15 capital cases?

16 DEFENDANT FENNELL: Yeah, I understand.

17 THE COURT: And do you understand that you're
18 entitled to swap him out for a lawyer who is on the Capital
19 Panel and does have that experience in capital cases? In other
20 words, that you have the right to swap him out for a lawyer on
21 the Capital Panel if you so choose.

22 DEFENDANT FENNELL: Yeah, I understand.

23 THE COURT: And do you understand you also have the
24 right to keep Mr. Tulman as your lawyer if you would like?

25 DEFENDANT FENNELL: I understand.

1 THE COURT: All right. And I think it's wise to take
2 some more time to talk about it and to think about it.

3 Is it fair, Mr. Tulman, to say that you will let me
4 know in a week's time?

5 MR. TULMAN: Certainly, your Honor. I'm going to go
6 speak with him tomorrow about this.

7 THE COURT: All right.

8 Does anybody think that I need to have Mr. Fennell
9 back in to get his decision on the record or is a letter from
10 Mr. Tulman sufficient?

11 MS. NICHOLS: We could just have him come back in,
12 your Honor, just to make sure that -- you could ask the same
13 questions and he could give those responses.

14 THE COURT: All right. It's probably safe.

15 Then why don't we do this. Let me ask Ms. Cama to
16 find a time not next week, but the week after.

17 You'll send me a letter in a week. If your client's
18 choice is he does want to swap out for Capital Panel counsel,
19 it will give me a little time to find somebody.

20 MR. TULMAN: Certainly, your Honor.

21 THE DEPUTY CLERK: February 15th, 2:30.

22 MR. TULMAN: Your Honor, I think I'm going to -- I
23 know. I don't think. I am going to be out of town at that
24 time. I'm returning on February 16th. Would February 20th be
25 a good day for the Court?

1 THE COURT: I'm sure we can squeeze it in.

2 THE DEPUTY CLERK: February 20th, 3:00.

3 MR. TULMAN: That's fine, your Honor.

4 THE COURT: All right. I didn't ask you,
5 Ms. Nichols, what your plans are for discovery at the jails.

6 MS. NICHOLS: So, your Honor, we are prepared today
7 to begin burning the copies for Ms. Greenwood of the discovery
8 that I just mentioned.

9 As the Court probably recalls, there has been a
10 protective order in place in this case since the beginning.
11 The first version of the protective order was violated and
12 discovery materials were placed online and, following that, the
13 parties had discussed a new protective order, which your Honor
14 entered in December. So we are looking for signature pages
15 from each of the defendants and the attorneys in the case.
16 Before we will be able to produce the discovery to the jails,
17 we will need the signature pages from all of the defendants at
18 that jail to ensure that everyone understands what the
19 protective order requires and does not permit. We are missing
20 signature pages from Mr. Frazier and Mr. Hawkins at this time,
21 and their respective attorneys. So all of the attorneys who
22 have signed, Ms. Greenwood may release the discovery to them,
23 but the discovery will not be produced to the defendants until
24 all have signed.

25 If I may, I would like to just say for the record

1 what the restriction is so there's no confusion.

2 The discovery material cannot be disclosed either by
3 the defendant or by the defendant's counsel to anyone other
4 than persons who are working for the attorney for that
5 defendant and a potential witness. And, additionally, the
6 defendants are not permitted to retain paper copies of most of
7 the discovery in their cells.

8 So the discovery is being provided electronically.
9 If attorneys want to print paper copies to review with the
10 defendants, they are certainly free to do so, but they must
11 take those paper copies with them and cannot leave them with
12 the defendants in the jail. As with the last protective order,
13 this material cannot be posted to Facebook, it cannot be posted
14 to the internet, and it cannot be disclosed to third parties.

15 So the government will work with Ms. Greenwood for
16 the production to the jails. And we anticipate that, when the
17 signature pages are received, then we will be able to get that
18 out.

19 THE COURT: All right.

20 MS. NEWMAN: Your Honor, if I might. I just want to
21 clarify.

22 Donna Newman on behalf of Seth Blain.

23 And I know that I had discussed this previously, but
24 now that we're clarifying, I want to be sure that it's clear.
25 The discovery for Mr. Blain has been put on Dropbox, which is

1 protected by who we distribute it to. It has a password, but
2 it is through the internet. And I wanted to be clear that that
3 was still something that we can continue to do.

4 THE COURT: It's not public.

5 MS. NEWMAN: Mr. Blain is out, but he knows that he
6 cannot then take that and reproduce it. And I think that was
7 the portion that they were looking for. But since it was a
8 general internet, I wanted to clarify.

9 THE COURT: That's okay, right?

10 MS. NICHOLS: That's fine. Thank you, your Honor.

11 THE COURT: Yes. The government agrees that's okay.

12 MR. BERTAN: And on before of Kyle Blain, he reviews
13 the same batch of discovery.

14 THE COURT: Yes. As long as it's password protected
15 and can't be public, I don't consider it "posted."

16 MR. BACHRACH: Your Honor, just an added complication
17 for Mr. Young I wanted to make you aware of.

18 Because Mr. Young is a paraplegic, he will not be
19 housed in a traditional prison. Instead, it's my understanding
20 he's going to be housed in a medical facility. For security
21 reasons, the marshals I know don't want me to say which one
22 because it's not a prison. It's basically a hospital. That
23 could cause some delays in getting him the discovery because we
24 will also need to get him a laptop, which can only be obtained
25 through the National Litigation Support Office. At least,

1 that's my understanding of how it works.

2 So I'm going to be making every effort to get that
3 done as quickly as possible, but just an added step for
4 Mr. Young since he will be in a hospital as opposed to a
5 prison.

6 THE COURT: If I need to sign anything, let me know.

7 MR. BACHRACH: Thank you, your Honor.

8 MS. NEWMAN: Donna Newman on behalf of Seth Blain.

9 With respect to the computer issue, as the Court may
10 be aware, may recall, I had made application directly to the
11 Court. The Court directed me to the Federal Defenders in the
12 National Litigation. I, after much ado, have received notice
13 from them that, in fact, they don't have computers to give out.
14 And they have instructed me to purchase my own computer for
15 Mr. Blain that would also be available, obviously, for Mr. Kyle
16 Blain and that that computer, which I would be reimbursed,
17 would be the property of the National Litigation and, after
18 this, would need to be returned. In fact, they gave me
19 specifications on the nature of the computer that I should
20 purchase I guess because then it would be universal, have more
21 applicability, although, for my case, I would need less of a
22 computer.

23 THE COURT: So you're supposed to buy one. They're
24 going to reimburse you. And when the case is done, you're
25 going to send it to them.

1 MS. NEWMAN: That's correct.

2 And so I would request, because the Court had ordered
3 me to go through National Litigation, that, in fact, I will
4 have filed today a new letter, and I would request that the
5 Court sign it, allowing me now, based on that latest
6 information, to purchase it.

7 THE COURT: Fine with me for you to do whatever the
8 folks in Washington have told you to do.

9 MS. NEWMAN: Thank you.

10 THE COURT: Same with you, Mr. Bachrach.

11 MR. BACHRACH: Thank you, your Honor.

12 MS. SHELLOW: Your Honor, lastly, on behalf of
13 Mr. Frazier, whose lawyer has not signed the protective order
14 because he is not here, I have texted him to inquire whether I
15 may sign on his behalf. If he so gives me permission, will you
16 permit me to sign for Mr. Epstein so that the discovery can be
17 promptly distributed to the clients?

18 THE COURT: That's all right with me. You can catch
19 up with Mr. Epstein after.

20 MS. NICHOLS: Certainly, your Honor.

21 It's not logically difficult to get the signature
22 pages from the attorneys. It's more so from their clients. So
23 if in Frazier would like to sign today --

24 THE COURT: I think the best thing is to deal with it
25 while we're all in the same building.

1 MS. SHELLOW: Mr. Frazier has signed.

2 THE COURT: And, Mr. Miedel, you may not have had a
3 chance to talk to Mr. Hawkins about it, but maybe --

4 MR. MIEDEL: Well, your Honor, I just met Mr. Hawkins
5 today. I do want some additional time to talk to him about it.
6 I'll be seeing him in the next few days. And I'll get the
7 signature page to the government within three, four days.

8 THE COURT: Very good.

9 MR. TULMAN: Scott Tulman.

10 Your Honor, my client, Mr. Fennell, is housed in
11 Valhalla. The coordinating discovery attorney has been able to
12 send disks to the MDC and the MCC. My client is more in need
13 of those disks, given the superseding indictment, than anyone
14 right now. I'm told by Ms. Greenwood that an order would be
15 required from the Court to allow Ms. Greenwood to send disks in
16 to Valhalla, to my client, so that he can review discovery in
17 this case.

18 THE COURT: I thought, Valhalla, you can't have
19 disks.

20 MS. GREENWOOD: Your Honor, my understanding is that
21 their policy, while it used to be that defendants there
22 routinely would receive disks directly, though, from the
23 government, that they have since shifted their policy and now
24 routinely receive hard drives.

25 My question for defense counsel, which I discussed

1 with them this morning, was, to the extent that the facility
2 has computers that would allow to read disks, my office can
3 certainly provide disks to those defendants at Valhalla, but I
4 would need a Court order to do so.

5 So perhaps I can reach out to the facility after this
6 conference. I speak regularly there with the Deputy
7 Commissioner. I can have a frank conversation with him about
8 the extent of the discovery in this matter.

9 THE COURT: You can tell him truthfully that I would
10 like to make sure the defendants have as much access to it as
11 possible. And if I need to sign an order, I will. I don't
12 want to do anything that presents a security problem, but I
13 hope that they will be able to work with you on that.

14 MS. GREENWOOD: Yes. And on a practical level, too,
15 I wanted to make sure that there are, indeed, computers on
16 which to review the disks, of course, so I will take care of
17 that.

18 THE COURT: I don't think that there are as many as
19 would be ideal, but I think there are.

20 All right. I know, Mr. Yannella, you have a matter
21 you want to take up, but can we let everybody else go?

22 UNIDENTIFIED SPEAKER: We don't have a date, your
23 Honor.

24 THE COURT: Oh. Right. Good point.

25 MR. YANNELLA: Judge, can I just ask for some

1 clarification on the meaning of disclosure in this order.

2 So I understand, in the protective order, I can't
3 even show my client's family a copy of the video.

4 MS. COMEY: That's our interpretation of the order,
5 your Honor. Third parties cannot see discovery material.

6 THE COURT: Unless they're potential witnesses to
7 what's on the video.

8 MR. YANNELLA: Judge, would you entertain individual
9 applications?

10 I think that when defendants' families understand
11 what the evidence is against them --

12 THE COURT: Well, if you --

13 MR. YANNELLA -- it can be helpful.

14 THE COURT: Well, let me ask you, Ms. Comey. I
15 wouldn't authorize distribution of the material to a family
16 member, but let's say a family member is in Mr. Yannella's
17 office and Mr. Yannella wants to show the family member what
18 the defendant's up against.

19 MS. COMEY: We would ask for an individual
20 application to your Honor on a case-by-case basis.

21 Our concern is that the breach of the protective
22 order that led us to this moment was by a family member of one
23 of these defendants.

24 THE COURT: Well, the answer is, yes, I will
25 entertain an individual application. Naturally, you should

1 speak to the government first. And if what you're looking to
2 do is show it in your office to the defendant's mother, I doubt
3 they'll have a problem with it, unless they have some reason to
4 mistrust the defendant's mother. And then if you have an
5 agreement, send me something and I'll so order it.

6 MR. YANNELLA: I'll do that.

7 THE COURT: All right.

8 The rest don't have to stick around for
9 Mr. Yannella's issue, except for his client, Mr. Lembhard.

10 Anything else we should do now?

11 MR. PALMA: We need a date.

12 THE COURT: Oh, the date. I keep forgetting the
13 date.

14 May 8th at 10 a.m.

15 MR. PALMA: That's not 90 days, your Honor.

16 THE COURT: It's three months and a week.

17 MS. NICHOLS: It's 97 days.

18 MR. PALMA: Wait, wait. September. I mean February,
19 March -- oh, okay. Sorry.

20 Your Honor, can we have 11?

21 THE COURT: Well --

22 MR. PALMA: The problem is I come from a distance,
23 far from White Plains.

24 THE COURT: Fine. 11:00.

25 MR. PALMA: Thank you.

1 THE COURT: May 8th, 11:00.

2 I'm going to exclude the time between now and then
3 under the Speedy Trial Act in the interest of justice. I find
4 the ends of justice served by the exclusion outweigh the best
5 interests of the public and the defendants in a speedy trial
6 because it will enable defendants to receive the remaining
7 discovery --this is not chitchat time, everybody -- it will
8 enable the defendants to receive the remaining discovery for
9 they and their lawyers to review it and to determine what
10 motions make sense.

11 All right.

12 Ms. Newman, hold your thought.

13 Everybody can leave except for Mr. Lembhard.

14 (Pause)

15 THE COURT: Ms. Newman.

16 MS. NEWMAN: Thank you, your Honor.

17 I have a very small issue. It's having to do with
18 amendment of Mr. Seth Blain's bail conditions, which is
19 consented to by Probation and the government, and that is he
20 was previously on home detention, electronic monitoring.
21 Probation has assured me that he's compliant. They wrote an
22 e-mail with respect to that that I shared with the government.
23 And they now would agree that he should continue on electronic
24 monitoring, but curfew as determined by Probation. So it's
25 changed by just taking off the home detention aspect of the

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1 bail and that's it.

2 THE COURT: Any objection?

3 MS. NICHOLS: No, your Honor. The government would
4 defer to Pretrial on this issue.

5 THE COURT: I will do the same. I'll remove the home
6 detention condition and substitute a curfew at the discretion
7 of Pretrial.

8 Keep up the good work, Mr. Blain.

9 MS. NEWMAN: Thank you very much, your Honor. I
10 appreciate it.

11 DEFENDANT SETH BLAIN: Thank you.

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